

## **922 KAR 1:305. Licensure of child-caring facilities and child-placing agencies.**

RELATES TO: KRS 2.015, 13B.050, 17.165(6), 199.011, 199.640, 199.670, 199.990, 600.020, 610.110(6), 620.140, 42 U.S.C. 671

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.640(5)(c) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations relating to licensure for child-caring facilities and child-placing agencies. This administrative regulation governs the licensure process for child-caring facilities and child-placing agencies and the appeals process.

Section 1. Definitions. (1) "Advisory board" means a group of citizens, approved by the board of directors, who gives advice, counsel, and support to a child-caring facility or a child-placing agency.

(2) "Cabinet" is defined by KRS 199.011(3).

(3) "Child" means:

(a) A child as:

1. Defined by KRS 199.011(4) and 600.020(9); or

2. Referenced in KRS 610.110(6);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 620.140(1)(d); or

(c) A person under age twenty-one (21) who meets the exception to the age of majority in accordance with KRS 2.015.

(4) "Child-caring facility" is defined by KRS 199.011(5) and 600.020(10).

(5) "Child-placing agency" is defined by KRS 199.011(6).

(6) "Division" means the Division of Regulated Child Care, Office of the Inspector General.

(7) "Licensee" means an individual, partnership, corporation or other entity authorized to operate a child-caring facility or child-placing agency, including a board of directors and a person authorized to make application.

Section 2. Initial Application. (1) An applicant for a license shall submit to the division:

(a) A completed Application for Licensure to Operate a Child-Caring Facility or a Child-Placing Agency, Form OIG 136;

(b) A nonrefundable licensure fee in the amount of \$100 in accordance with KRS 199.640(4);

(c) A copy of the Articles of Incorporation on file with the Secretary of State, if the applicant is a corporation;

(d) A mission statement of purpose, objective, scope of service provided, and intake policy specifying the type of child to be accepted for care;

(e) A copy of the constitution and bylaws;

(f) A list of officers, board members, and advisory board members, if any, including the address and profession;

(g) The name and title of each officer and the term of office;

(h) A list of staff including position or title and qualifications;

(i) Verification or approval from the Department of Housing, Buildings and Construction;

(j) Approval from the Office of the State Fire Marshal or designee; and

(k) Written documentation of an approved water and sewage system in accordance with lo-

cal, county, and state laws.

(2) A license issued by the division shall be:

(a) For a specific physical location within the state;

(b) For operation by a specific licensee;

(c) Nontransferable;

(d) Approved and documented by the State Fire Marshal before a licensure survey is conducted; and

(e) Awarded if an on-site inspection, described in Section 6 of this administrative regulation, results in:

1. A determination that the applicant qualifies for licensure as established in 922 KAR 1:300 or 922 KAR 1:310; or

2. An acceptable plan of correction as described in Section 4 of this administrative regulation, if applicable.

(3) A child-caring facility or a child-placing agency operating without a license shall be subject to legal action, pursuant to KRS 199.990.

Section 3. Renewal Licensure. Relicensure shall require the following procedures:

(1)(a) Not less than sixty (60) days prior to the date of expiration of its license, a licensee shall submit a:

1. Completed Application for Licensure to Operate a Child-Caring Facility or a Child Placing Agency, Form OIG 136; and

2. Nonrefundable licensure fee in the amount of fifty (50) dollars in accordance with KRS 199.640(4).

(b) If a licensee has made application for renewal within the timeframe specified in paragraph (a) of this subsection, the existing license shall remain in effect until the division takes action on the renewal application.

(2) The applicant shall provide the following documentation to the annual inspector:

(a) A list of officers, board members, and advisory board members, if any, including address and profession;

(b) The name and title of each officer and term of office; and

(c) A list of staff that includes position or title and qualifications.

(3) The child-caring facility or child-placing agency shall comply with its mission statement, program narrative, and applicable federal and state administrative regulations in regard to the program operation.

(4) The child-caring facility or child-placing agency shall have an annual financial audit completed by an independent accounting firm or a certified public accountant.

(5) Notification of a change in the following shall be made to the division in advance to allow for approval from the division, and the State Fire Marshal or designee when applicable, before implementation:

(a) Ownership or sponsorship;

(b) Location approval documented by the State Fire Marshal or designee;

(c) Service type provision described in 922 KAR 1:300 or 922 KAR 1:310;

(d) Increase in capacity approval documented by the State Fire Marshal or designee; or

(e) The addition of a new building or converting of administrative space to living space approval documented by the State Fire Marshal or designee.

(6) A renewal license shall be issued by the division if the division determines the applicant qualified for renewal licensure in accordance with 922 KAR 1:300 or 922 KAR 1:310.

(7) The child-caring facility or child-placing agency shall post its license in a place visible to the public.

- (8) A license shall not be sold or transferred.
- (9) Change of ownership.
  - (a) A prospective new owner shall submit:
    - 1. A Licensing and Regulation Application for Licensure to Operate a Child-Caring Facility or a Child-Placing Agency, form OIG 136;
    - 2. A fee as specified in Section 2(1)(b) of this administrative regulation; and
    - 3. If the child-caring facility increases capacity, documentation of approval by the Office of the State Fire Marshal or designee.
  - (b) The division shall perform an on-site inspection, pursuant to KRS 199.640(3) and (5).
  - (c) The effective date of a license granted on an application for change of ownership shall be:
    - 1. For a child-caring facility or a child-placing agency that meets requirements of this administrative regulation and 922 KAR 1:300 or 922 KAR 1:310, the date the child-caring facility or the child-placing agency is acquired by the new owner;
    - 2. For a child-caring facility or a child-placing agency that does not meet requirements, the date that compliance with this administrative regulation and 922 KAR 1:300 or 922 KAR 1:310 is achieved; or
    - 3. For a child-caring facility requesting an increase in capacity, not before the approval date issued by the State Fire Marshal or designee.
- (10) Changes to the child-caring facility or the child-placing agency.
  - (a) A licensee shall notify the division, in writing, if there is a change to the child-caring facility or child-placing agency, as described in subsection (5) of this section.
  - (b) The notification shall be signed by each owner listed on the license application.
  - (c) A fee shall not be charged.

Section 4. Corrective Action Plans. (1) The division shall perform an on-site inspection, as required by KRS 199.640(3) and (5). A regulatory violation of the standards identified in 922 KAR 1:300 or 922 KAR 1:310 during inspection shall be reported to the child-caring facility or the child-placing agency in a written statement of deficiency. An applicant or licensee may request the opportunity to informally dispute a deficiency, pursuant to KRS 199.670(4).

(2) Unless a request for the opportunity to informally dispute a deficiency has been made, the child-caring facility or child-placing agency shall submit, within ten (10) days of receipt of the statement of deficiency, a written corrective action plan for the elimination or correction of a violation. The corrective action plan shall detail:

- (a) Specific action undertaken to correct a violation;
- (b) The date action was initiated;
- (c) Action utilized to assure ongoing compliance;
- (d) Supplemental documentation requested as a part of the corrective action plan; and
- (e) Signature of the licensee or designated representative of the licensee and the date of signature.

(3) The division shall review the corrective action plan and notify the child-caring facility or the child-placing agency, in writing, of the decision to:

- (a) Accept the corrective action plan;
- (b) Not accept the corrective action plan; or
- (c) Deny, suspend, or revoke the license, as described in Section 7 of this administrative regulation.

(4) A notice of unacceptability shall state the specific reasons the plan is unacceptable.

(5) A child-caring facility or a child-placing agency notified of unacceptability of its corrective action plan shall, within ten (10) days of notification:

- (a) Submit an amended corrective action plan; or
  - (b) Have its license revoked or denied.
- (6)(a) The cabinet shall not review or accept more than three (3) corrective action plans from a licensee in response to the same written statement of deficiency.
- (b) If a licensee fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan, the cabinet shall deny or revoke the license.
- (7) If the cabinet proposes to deny, suspend, or revoke an application or licensure, the division shall notify the applicant or licensee, in writing, of the right to request an informal dispute resolution meeting as required by KRS 199.670(2).
- (8) A license shall be issued as required by KRS 199.640(3), if the child-caring facility or the child-placing agency has met the requirements of this administrative regulation and 922 KAR 1:300 or 922 KAR 1:310.

Section 5. Fees. (1) A licensing fee shall be charged as pursuant to KRS 199.640(4).

(2) A licensing fee shall be:

- (a) Submitted with the OIG-136;
- (b) Made payable to the Kentucky State Treasurer; and
- (c) Paid by:
  1. Certified or cashier's check;
  2. Money order;
  3. A prepaid account established with the cabinet; or
  4. Electronic fund transfer, including credit or debit card, once the function becomes available.

Section 6. Inspection. (1) A child-caring facility or a child-placing agency shall not deny access to a human services surveyor or other representative of the cabinet, after proper identification, to make an inspection for determining compliance with the requirements of this administrative regulation and 922 KAR 1:300 or 922 KAR 1:310. Denial of access shall result in an immediate revocation of its license.

(2) A human services surveyor or other representative of the cabinet shall make an unannounced inspection of a child-caring facility or child-placing agency based on:

- (a) An application for license;
- (b) An application for renewal of a license;
- (c) A complaint; or
- (d) A follow-up visit to verify implementation of a plan of correction as described in Section 4 of this administrative regulation.

(3)(a) An unannounced inspection of a child-caring facility or a child-placing agency:

1. Shall be made during any time services are provided by the facility or agency;
2. May include the search and seizure, if necessary, of any records or paperwork. A photocopy of any record or paperwork by the surveyor is the preferred method of obtaining a copy; and
3. Shall be limited to ensure compliance with the standards set forth in:
  - a. KRS 199.640(5);
  - b. This administrative regulation; and
  - c. 922 KAR 1:300 or 922 KAR 1:310.

(b) The inspection of a licensed child-caring facility or a child-placing agency based on a complaint or a follow-up visit shall not limit the scope of the inspection to the basis of the complaint or the implementation of a plan of correction.

Section 7. Basis for Denial, Suspension, or Revocation. (1) The division shall deny an application or suspend or revoke a license if the applicant or the licensee fails to meet the requirements of:

(a) This administrative regulation, 922 KAR 1:300, or 922 KAR 1:310;

(b) KRS 17.165(6); or

(c) 42 U.S.C. 671 and implemented federal rule.

(2) Effect of denial or revocation. The division shall not accept an application to operate a child-caring facility or a child-placing agency from an entity that:

(a) Previously had a license denied, suspended, or revoked for a reason described in subsection (1)(b) of this section; or

(b) Within the previous five (5) years, voluntarily forfeited a license after the cabinet initiated denial or revocation action.

(3) A penalty for violation of this administrative regulation shall be determined by reference to KRS 199.990.

Section 8. Right of Appeal. (1) If an application or license has been denied, suspended, or revoked, the division shall proceed in accordance with KRS 199.670(2) and (3).

(2) If, within fifteen (15) days after receiving notice of the division's action, the applicant or licensee requests a hearing, the division shall:

(a) Appoint a hearing officer; and

(b) Proceed pursuant to KRS 13B.050.

(3) The cabinet may take emergency action pursuant to KRS 199.670(3).

Section 9. Incorporation by Reference. (1) "OIG 136, Application for Licensure to Operate a Child-Caring Facility or a Child-Placing Agency", 12/2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Inspector General, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (26 Ky.R. 2181; Am. 27 Ky.R. 569; 1007; eff. 10-16-2000; 28 Ky.R. 1716; 2229; 2609; eff. 6-14-2002; TAm eff. 10-27-2004; TAm eff. 1-27-2006; 45 Ky.R. 2231, 2938; eff. 5-31-2019.)